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IN THE

Supreme Court of the United States

October Term, 1944.

No. 691.

RAILWAY MAIL ASSOCIATION,
Appellant.

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney-General of the State of New York,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR APPELLANT.

DANIEL J. DUGAN,
Counsel for Appellant.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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POINT I.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR APPELLANT.

Opinions Below.

The opinion of the Court of Appeals of the State of New York is reported in 293 N. Y. 315; the opinion of the Appellate Division in 267 App. Div. 470; and the opinion of the Special Term in 180 Misc. 868.

Jurisdiction.

This appeal is taken pursuant to Section 237 (a) of the Judicial Code of the United States (28 U. S. C. A. Section

344 (a)) and the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, amending Section 2 of the Act of Congress of January 31, 1928, Public, numbered 10, Seventieth Congress, from the final judgment of the Supreme Court of the State of New York, Albany County, entered on July 21, 1944 upon the order and remittitur of the Court of Appeals of the State of New York, which remittitur bears date July 19, 1944. Application for an order allowing an appeal to this Court was presented on October 11, 1944 to Mr. Justice Robert H. Jackson, an Associate Justice of the Supreme Court of the United States, and the order allowing the appeal was signed by him on October 17, 1944. Reference is made to the statement as to jurisdiction filed pursuant to Rule 12 for a concise statement of the grounds on which the jurisdiction of this Court is invoked. On December 18, 1944 an order was entered in this Court in this cause reciting that "Further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing of the case on the merits."

The Statute of the State, the Validity of Which is Involved.

The statutes of the State of New York and portions thereof, the validity of which is drawn in question in this cause, are Sections 41, 43 and 45 of the Civil Rights Law of the State of New York as amended in 1940 and 1942, being Chapter 6 of the Consolidated Laws of said State.

The validity of Sections 701, Subdivision 5, and 715 of Article 20 of the Labor Law of the State of New York, being Chapter 31 of the Consolidated Laws of said State, was not drawn in question but these sections of the Labor Law were relied upon by the appellant upon its contention that they and Sections 41, 43 and 45 of the Civil Rights Law were related statutes and should be read together as part

of a unitary system and so read would bring into play the denial of equal protection under the Fourteenth Amendment of the United States Constitution for the reason that under the Labor Law provisions employees of the State or its political subdivisions were exempted from the application and effect of Article 20 of the Labor Law.

Said statutes are herein set out verbatim as follows:

McKinney's Consolidated Laws of New York, Book 8, Civil Rights Law:

Section 41. Penalty for violation.

"Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. As amended L. 1918, c. 196; L. 1932, c. 234, sec. 2; L. 1940,

c. 9, sec. 2; L. 1941, c. 893, sec. 2; L. 1942, c. 478, eff. April 17, 1942."

Section 43. Discrimination by labor organizations prohibited.

"As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer. Added L. 1940, c. 9, sec. 1, eff. Feb. 14, 1940."

Section 45. Powers of administration vested in Industrial Commissioner:

"The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries. Added L. 1942, c. 677, eff. May 6, 1942."

McKinney's Consolidated Laws of New York, Book 30, Labor Law:

Section 701. Definitions.

"5. The term 'labor organization' means any organization which exists and is constituted for the pur-

pose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

Section 715. Application of article.

"The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations. Added L. 1937, c. 443, sec. 1, eff. July 1, 1937."

Section 473 of the Civil Practice Act providing for declaratory judgment is as follows:

"The supreme court shall have power in any action or proceeding to declare rights and other legal relations on request for such declaration whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment. Such provisions shall be made by rules as may be necessary and proper to carry into effect the provisions of this section."

Rules of Civil Practice, 210-214 inclusive, are the applied rules.

Rule 210: An action in the supreme court to obtain a declaratory judgment, pursuant to section four hundred and seventy-three of the civil practice act, in matters of procedure shall follow the forms and practice prescribed the civil practice act and rules for other actions in that court.

Rule 211:. The prayer for relief in the complaint shall specify the precise rights and other legal relations of which a declaration is requested and whether further or consequential relief is or could be claimed. If further relief be claimed in the action, the nature and extent of such relief shall be stated.

Rule 212: If, in the opinion of the court, the parties should be left to relief by existing forms of actions, or for other reasons, it may decline to pronounce a declaratory judgment, stating the grounds on which its discretion is so exercised.

Rule 213: In order to settle questions of fact necessary to be determined before judgment can be rendered, the court may direct their submission to a jury. Such verdict may be taken by the court before which the action is pending for trial or hearing. The provisions of sections four hundred and twenty-nine and four hundred and thirty of the civil practice act apply to a verdict so rendered.

Rule 214: Costs in such an action shall be discretionary and may be granted to or against any party to the action.

Postal Service Act, December 21, 1893, 39 U.S.C.A.

U. S. C. A. Title 5—Executive Departments and Government Officers and Employees

Section 652. Removals from Classified Civil Service only for Cause.

No person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same. Membership in any society, association, club or other form

of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups or (of) persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with. (Aug. 24, 1912, c. 389, sec. 6, 37 Stat. 555.)

Statement of Case.

The appellant brought this action against the Industrial Commissioner of the State of New York and the Attorney-General of the State of New York to procure a declaratory judgment of the Supreme Court of said State pursuant to Section 473 of the Civil Practice Act of the State of New York and Rules of Civil Practice 210-214 of the State of New York, for a determination:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of Article 20 of the Labor Law have no application and do not apply to the appellant, Railway Mail Association, its members and division and branch associations; and that the Railway Mail Association is not a labor organization within the meaning or contemplation of such laws.

2. That if sought to be applied to the appellant herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7; and of Articles Fifth and Fourteenth of the Amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York, and

3. That the Supreme Court declare and determine the rights of the parties herein.

4. And for further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure under the aforesaid provisions of the Civil Rights and Labor Laws against the appellant or its division or branch associations within the State of NewYork, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises.

In substance, the appellant complains of an attempt on the part of the Industrial Commissioner of the State of New York to declare the appellant to be a labor organization within the meaning of Article 20 of the Labor Law and Section 43 of the Civil Rights Law of the State of New York, and to coerce the appellant to admit into its membership contrary to the provisions of its constitution. (Complaint, paragraphs 6 to 12 inclusive, R. 2-4.)

The appellant is a membership fraternal beneficiary corporation organized in the year 1898 under the laws of the State of New Hampshire, and has its principal office at the City of Portsmouth in that State. It was organized under the corporate name of "National Association of Railway Postal Clerks" which name was changed in 1904 to

"Railway Mail Association" (R. 19). It has no capital stock and was not organized for profit.

As stated in its Charter, "the object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Since September, 1913, appellant has been conducting the business of a fraternal benefit insurance corporation within the State of New York under the applicable provisions of the Insurance Law of said State and by the authority of the Superintendent of Insurance (Complaint, R. 3; Letter of Superintendent of Insurance, dated September 4, 1913; Judgment, R. 15). Membership is comprised of two classifications, one of which is a general or non-beneficiary membership, and the other is a beneficiary or full membership. The beneficiary members contribute to a benefit fund established by the levy upon said beneficiary members of assessments which benefit fund is created and maintained for the purpose of paying claims of such beneficiary members or their beneficiaries resulting from death or disability occasioned to said beneficiary members through external, violent and accidental means. The entire membership of the Association at the time of the commencement of this action comprised upwards of 22,000

members, 99% of whom hold beneficiary or full membership (Complaint, R. 4).

Under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians (Complaint, R. 2).

The Railway Mail Association conducts its business through division and branch associations which are established and maintained in areas in accordance with the division of the Railway Mail Service conducted by the United States Government. These division and branch associations have the right to adopt constitutions, by-laws, rules and regulations not inconsistent with the provisions of the appellant's constitution and must have the approval of the Executive Committee of the Railway Mail Association before they become operative (R. 2-3).

One of these branch associations in the Second Division of the Railway Mail Association in the City of New York has attempted to elect into membership of the Association by selecting applicants for membership who are Railway Postal Clerks of the colored race in violation of Article III of the Constitution of the Railway Mail Association (R. 6). The appellant denied such applicants membership in its organization whereupon at the instance of members of the branch association the Industrial Commissioner of the State of New York intervened asserting that the appellant was a labor organization and that it and its division and branch associations, officers and members within the State of New York were controlled by Section 43 and the related

Sections 41 and 45 of the Civil Rights Law and that appellant, its division and branch associations, officers and members should comply therewith. After taking the position that the Railway Mail Association, its division and branch associations, officers and members were not a labor organization, that the statutes in question did not apply and if sought to be applied would violate certain mentioned provisions of the State and Federal Constitutions, this action for declaratory judgment was instituted.

It was the contention of the appellant set forth in its Complaint that its membership being drawn from male Railway Mail Clerks and substitutes in the Railway Mail Service whose appointments, promotions and classifications are defined and regulated under the Civil Service of the United States and the laws of the United States appertaining to the Federal Postal System, and in view of the purposes stated in plaintiff's Certificate of Incorporation the provisions of Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law of the State of New York did not apply to it because it was not a labor organization within the meaning of Section 43 of the Civil Rights Law and of Subdivision 5 of Section 701 and Section 715 of the Labor Law, as the purposes of these laws being related to each other were aimed at and intended to apply to labor relations between employers and employees in the industrial system of our society and had no application to workers employed in the Civil Service of the United States. That if applied to the appellant, its division and branch associations and its members such statutes would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the appellant and its members, and its di-

vision and branch associations due process and equal protection of law and would be and constitute an unlawful and unreasonable abridgment of the property rights of the appellant and its division and branch associations, and would offend the due process provisions of the Fourteenth Amendment to the Constitution of the United States in that said provisions of the Civil Rights Law of the State of New York if applied to the appellant, its division and branch associations and its members created arbitrary, capricious and unreasonable classifications and regulations and denied to the appellant, its division and branch associations and members within the State of New York the equal protection of the laws and deprived the appellant, its division and branch associations and its members of their property without due process of law; and are an invasion of and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish postoffices and Post-roads.

Pleadings.

(a) The Complaint

Paragraph 6 of the Complaint is as follows:

"6. That under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians." (R. 2.)

Paragraphs 15, 16, 17 and 18 are as follows:

"15. That by Section 715 of the said Labor Law, it is provided that,

'The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the Nation-

al Labor Relations Act or the Federal Railway Labor Act, or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

"16. That by chapter 9 of the Laws of the State of New York for the year 1940, Article 4, of the Civil Rights Law of the State of New York was amended by adding thereto a new section known as Section 43 which reads as follows:

'Discrimination by labor organizations prohibited. As used in this section, the term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer.'

"17. That Section 41 of the Civil Rights Law of the State of New York now in force provides as follows:

'Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dol-

lars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment.'

"18. That by Section 45 of said Civil Rights Law, being Chapter 677 of the Laws of 1942 and effective on May 6 of said year, it is provided that:

'The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries'." (R. 4-6.)

(b) The Answer

By paragraph 1 of the Answer, defendants deny that the definition of "labor organization" set forth in paragraph 14 of the Complaint is applicable for any purpose except Article 20 of the Labor Law and they further deny that it is applicable to the issues involved here.

By paragraph 2, defendants deny that the statutory provision alleged in paragraph 15 of the Complaint is applicable to issues involved herein (R. 10).

Paragraphs 14 and 15 of the Complaint are, respectively as follows:

"14. That under the provisions of Article 20 of the Labor Law of the State of New York, being Chapter 334 of the laws enacted in 1937, it is provided that under subdivision 5 of Section 701, that,

'The term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection, and which is not a company union as defined herein.'

"15. That by Section 715 of the said Labor Law, it is provided that,

'The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the National Labor Relations Act or the Federal Railway Labor Act, or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations'." (R. 4.)

Defendants deny each and every allegation of paragraph 24 of the Complaint and so much of paragraph 22 of the Complaint as alleges that the plaintiff is not a "labor organization" within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the State of New York.

Paragraphs 22 and 24 of the Complaint are as follows:

"22. Upon information and belief plaintiff alleges that the plaintiff is not a labor organization within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the State of New York aforesaid but on the contrary is a membership corporation authorized to, and carrying on the business of a fraternal beneficiary association for the benefit of its members and their beneficiaries and not for profit.

That plaintiff draws its membership from male clerks engaged in the Railway Mail Service of the United States Government; that such Railway Mail Service

does not involve industrial enterprise; that appointments and promotions in such Railway Mail Service are regulated and controlled by the laws of the United States; that neither the plaintiff nor any of the male Railway Postal Clerks is engaged in industrial enterprise but its members are and constitute a class of civil service employees of the United States Government engaged in and conducting a governmental function exclusive to the Government of the United States and who possess certain peculiar rights and privileges to security and protection in such Government Service and have not the right to strike to enforce any grievance in relation to their service or employment in the Railway Mail Service."

"24. That the provisions aforesaid of the Civil Rights Law if sought to be applied against the plaintiff, its Division and Branch Associations and its members would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the plaintiff and its members, and its Division and Branch Associations due process and equal protection of law and would be and constitute an unlawful and unreasonable abridgment of the property rights of the plaintiff and its Division and Branch Associations, and would offend the due process provisions of the Fifth and Fourteenth Amendments of the Constitution of the United States in that said provisions of the Labor Law and of the Civil Rights Law of the State of New York would create arbitrary, capricious and unreasonable classifications, and would deny to the plaintiff and its members, and its Division and Branch Associations within the State of New York the equal protection of the laws and would deprive the plaintiff of its property without due process of law; and is an invasion of and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish post offices and post roads."

Paragraph 4 of the Answer is as follows:

"4. Defendants lack knowledge or means of information as to the truth or falsity of the allegation con-

tained in the second sentence of paragraph twenty-two of the complaint, and likewise as to certain allegations contained in other paragraphs of the complaint; and defendants believe that the allegations of paragraph two of the complaint are in certain immaterial respects too broad; but for the purpose of this litigation defendants admit all allegations of the complaint except those denied in the preceding paragraphs of this answer." (R. 10.)

The issues raised by the pleadings under stipulation of the parties were presented for determination at the Special Term of the Supreme Court of the State of New York which Court granted judgment for the plaintiff as prayed for in the Complaint upon a construction of the statutes holding that said statutes were without legal force or effect as applied to the plaintiff, its division and branch associations and its members within the State of New York. Upon the appeal to the Appellate Division the judgment at Special Term was reversed and the Complaint of the plaintiff was directed to be dismissed. The Appellate Division construing Sections 41, 43 and 45 of the Civil Rights Law as to apply to the plaintiff, its division and branch associations and its members and holding that the statutes as thus construed were not repugnant to the due process and equality provisions of the Fourteenth Amendment and that said statutes did not invade or violate the postoffice, post-roads clause of Article I, Section 8, Subdivision 7 of the United States Constitution granting exclusive power to the Federal Government to establish postoffices and post-roads.

In the Court of Appeals the plaintiff's contention as to the construction of the statutes was rejected, such Court holding that Sections 41, 43 and 45 of the Civil Rights Law were applicable to the plaintiff, its division and branch associations and its members, the Court declining to apply the

in pari materia principle of construction to Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law which the plaintiff had contended were related statutes and should be construed as dependent parts of a unitary plan dealing with related subjects of labor relations. In this way the Court decided that the exemptions of employees in the public service of the State or its subdivisions did not exempt them from the application of Sections 41, 43 and 45 of the Civil Rights Law. The Court, however, did pass upon the constitutional questions presented by the plaintiff under the due process and equality clauses of the Fourteenth Amendment, and the postoffices and post-roads clause of Article I, Section 8, Subdivision 7 of the Constitution of the United States in which exclusive power is granted to the Federal Government to establish postoffices and post-roads, holding adversely to plaintiff's contentions.

The Stipulation.

The parties entered into a stipulation that the issues arising from the pleadings be submitted to the Special Term of the Supreme Court held at the City of Albany, New York, on the 24th of September, 1943, as though upon a motion by the plaintiff for summary judgment as prayed in the Complaint, and upon a cross-motion by defendants that the Complaint be dismissed (R. 11-14). This Stipulation was entered into for the convenience of the court and counsel. Such of this written data as was competent and relevant might be submitted and considered by the courts. This, of course, did not contemplate that the whole field of literature on the topic of labor organizations or the observations of writers and commentators on the scope and effect of plaintiff's charter and its legal status

as a corporate entity, was to be regarded as having any evidentiary value (R. 13).

The important factors of the appellant's status are its legal existence and the purposes for which it was formed. The fundamental purpose is to establish a fraternal beneficiary society for the sole benefit of its members and their beneficiaries, and other purposes of a social character to provide closer social relationship among Railway Mail Clerks to enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service.

The intimacy among the members arising out of such closer social relationship would be calculated more readily to attract them as a unit in any movement designed for their benefit as a class. Any benefit resulting from such movement would enure to the advantage of all Railway Mail Clerks regardless of their membership in the appellant.

Exhibits.

Among the exhibits submitted to the Courts below was a photostatic copy of the Certificate of Affiliation issued to the appellant by the American Federation of Labor. The form of the certificate is prepared by the American Federation of Labor and the word "union" appears in the printed context. The significance of the word "union" lies in the fact that by its use the body represented by it has declared a purpose to affiliate in a federation constituted under the American Federation of Labor.

Among the objects of the A. F. of L. are the encouragement and formation of local trade and labor unions and closer federation of such societies to secure legislation in

the interest of the working masses, the establishment of national and international trade unions based upon the strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies, and an American federation of all national and international trade unions to aid and assist each other * * * to secure legislation in the interest of the working people, and influence public opinion by peaceful and legal methods in favor of organized labor."

At a convention of representatives of its membership held in Cleveland, Ohio, in June, 1917, a resolution was adopted to submit by vote on referendum to its entire membership the question of whether it should affiliate with the American Federation of Labor, an unincorporated association, reserving the form and identity of the appellant as a corporation. By a majority the membership voted in favor of such affiliation and in December, 1917, a Certificate of Affiliation was granted by the A. F. of L. to the members of the Executive Committee of the appellant "to constitute the union herein named and known under the title of Railway Mail Association for the purpose of a thorough organization of the trade, and a more perfect Federation of all TRADES and LABOR UNIONS. And the Union being duly formed, is empowered and authorized to initiate into its membership any person or persons in accordance with its own laws. And to conduct the business of said union in compliance with the best interests of the trade and labor in general. The autonomy of the Union is hereby ordained and secured."

> "PROVIDED, That the said Union do conform to the Constitution, Laws, Rules and Regulations of the AMERICAN FEDERATION OF LABOR, and in default thereof, or any part, this Certificate of Affiliation may be suspended or revoked according to the laws of this FEDERATION. And should the said RAIL-

WAY MAIL ASSOCIATION be dissolved, suspended or forfeit this Certificate of Affiliation, then the persons to whom this Certificate of Affiliation is granted, or their successors, bind themselves to surrender the same with such other property as shall properly belong to this FEDERATION. And further, in consideration of the due performance of the above, the

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does hereby bind itself to support the said RAILWAY MAIL ASSOCIATION in the exercise of all its rights, privileges and autonomy as an affiliated Union."

Ample provision was thus made by the appellant to preserve its corporate existence and to reserve to itself its corporate purposes and their right to supremacy and with complete autonomy.

Indeed, less could not be reserved within the principle of *Ultra Vires*. The appellant is a Corporate Entity. It is given legal rights by law and yet within those rights there are limits. The appellant could not subordinate its legal existence or identity to affiliate with the A. F. of L., an unincorporated association. But the appellant did not do this. It reserved its form and identity in the votes of its membership which approved the proposal to affiliate. Even the membership could not transcend the corporate powers of the appellant.

It was not within the power of the appellant to subordinate its corporate faculties to the A. F. of L. through the act of appellant's membership in authorizing such affiliation.

In 19 Corpus Juris Secundum, Secs. 965-980, discussing the meaning of the term "*ultra vires*", it is stated:

"Strictly speaking, an *ultra vires* act is one outside the scope of the powers conferred by the legislature,

and although the term has been used indiscriminately, it is properly distinguishable from acts which are illegal, in excess or abuse of power, or executed in an unauthorized manner, or acts within corporate powers but outside the authority of particular officers or agents."

Ultra vires and illegality distinguished. Although, as appears above, the phrase "*ultra vires*" has been used to designate, not only transactions beyond the express and implied powers of the corporation, but also transactions which are contrary to public policy or contrary to some statute expressly prohibiting them, the terms "*ultra vires*" and "illegality" represent ideas which are totally distinct and altogether different. A corporate transaction may be illegal in the true and proper sense, or it may be *ultra vires* without being illegal. According to the weight of authority, when corporate acts are spoken of as *ultra vires*, it is not intended that they are illegal, but merely that they are not within the powers conferred on the corporation by the act of its creation.

Distinction is to be made between act of corporation which is merely without authority, and one which is illegal. In the one case, it is a question of authority; in the other, of legality. If it be granted that the acts complained of are *ultra vires*, still they were not in violation of express statute; they were not *mala in se* or *mala prohibita*, or against public policy.

What, therefore, was the purpose of the Executive Committee with the approval of a majority of the membership in accepting the Certificate of Affiliation? It is clear that the A. F. of L., the spokesman for the labor movement which had extended its efforts on behalf of workers

generally without regard to membership in organized labor, was an influential factor in molding public opinion, and exerted strong power in influencing beneficial legislation both in the Congress and in the Legislatures of the States for the improvement of labor standards. This was so not only in private enterprise but even in public service. Doubtless, in modern progress the law-making bodies even if left to themselves would recognize the need for providing standards in keeping with the march of time, but whether they would or not, the exertion of the A. F. of L. did remind them of the necessity and of the justness which modern legislation reflected. The leaders of capital always aware of their self-interests were not without powerful lobbies to oppose any legislation which might improve the condition of the working class at some cost to the employers.

For the privilege of the affiliation the plaintiff paid its *quid pro quo* in the form of modest *per capita* dues on its membership so that the relationship established by the affiliation was one of merely paying for a beneficial service which the A. F. of L. could render. In other words, the A. F. of L. was a representative of the plaintiff in the halls and committee-rooms of the Congress.

While the employment of the Railway Mail Clerks is political in the sense that those who serve, serve only their government, there is nevertheless a background of economy, for in order to serve one must live, and living must rest secure upon an adequate requital for the service rendered. It was through the failure of those in charge of administrative fields to recognize the justice of modern standards of living for the worker in public service and their opposition to the efforts of such worker to present his cause to the departments, or the Congress, that neces-

sity arose for the public employee to turn to such help as he might get to arouse public opinion in his behalf in support of just legislation.

Assignment of Errors.

The Court of Appeals erred:

1. In holding that said Section 43 of said Civil Rights Law of the State of New York as applied to the appellant, its division and branch associations and members was not repugnant to the provisions of Article I, Section 8, Subdivision 7, of the Constitution of the United States granting to the Congress of the United States the exclusive power for the enactment of legislation in establishing postoffices and post-roads; and in denying and overruling the appellant's contention that the postoffice and post-roads clause aforesaid and the laws enacted by Congress pursuant thereto were exclusive.

2. In holding that the appellant and its division and branch associations and members within the State of New York whose membership is drawn from the classified service of the Federal Government in the Railway Mail Department of the Post Office Department of the United States are subject to the provisions of Sections 43 and 45 of the Civil Rights Law of the State of New York.

3. In holding that said Sections 43 and 45 of said Civil Rights Law as applied to the appellant and its members was not an attempt to regulate an instrumentality of the Federal Postal System.

4. In holding that said Sections 43 and 45 of the said Civil Rights Law as applied to the appellant, its division

and branch associations and its members within the State of New York had no relation to the postoffice and post-roads clause of the Constitution of the United States.

5. In holding that the provisions of Sections 41, 43 and 45 of the Civil Rights Law were not repugnant to the due process guarantee of the Fourteenth Amendment to the Constitution of the United States.

6. In holding that said sections of the Civil Rights Law did not constitute an arbitrary, unlawful and unreasonable abridgment of the property rights of the appellant and its division and branch associations and of their liberty of contract, and did not deprive them of their property within the State of New York in violation of the due process clause of the said Fourteenth Amendment to the Constitution of the United States.

7. In holding that the said provisions of the Civil Rights Law as applied to the appellant, its division and branch associations and members, did not create arbitrary, capricious and unreasonable regulations contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States, and did not create arbitrary, capricious, and unreasonable and discriminatory classifications contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

8. In holding that the provisions of said Civil Rights Law did not deprive the appellant of its property without due process of law under the Fourteenth Amendment aforesaid.

9. In affirming the judgment entered in the Supreme Court of the State of New York upon the order of the Appellate Division of the Third Judicial Department of said State which dismissed the complaint of the plaintiff in this action.

Summary of Argument.

1. As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members.

2. These sections are an invasion of and are in contravention to Article I, Section 8, Subdivision 7, of the Constitution of the United States.

3. The procedure in this case for declaratory judgment with prayer for injunctive relief presents a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Article III, Sections 1 and 2).

POINT I.

As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members.

Coppage v. Kansas, 236 U. S. 1.
Wolff Packing Co. v. Ct. of Ind. Relations, 262 U. S. 522.
Same v. Same, 267 U. S. 552.
Nebbia v. New York, 291 U. S. 502.
Olsen v. Nebraska, 313 U. S. 236.
Buchanan v. Warley, 245 U. S. 60.
Southern Railway Co. v. Virginia, 290 U. S. 190.

1. The appellant is a membership corporation. Its membership is drawn from regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service. Membership is limited to such clerks who are of the Caucasian race or are native American Indians. The appellant is created and organized under the laws of the State of New Hampshire. It is not a creation of New York State's laws. In doing business within the State of New York it is subject to the latter's laws insofar as such laws are not offensive to or do not constitute an invasion of the provisions of the Federal Constitution.

As applied to the appellant, its division and branch associations and members within the State of New York, Sections 41, 43 and 45 of the Civil Rights Law offend the due process provisions of the Fourteenth Amendment to the Constitution of the United States.

As applied to the appellant these sections of the Civil Rights Law impose an arbitrary and unreasonable regulation upon

(a) the right of the appellant to conduct its business within the State of New York;
(b) the ownership and management of its property;
(c) its liberty of contract;
(d) its right to the selection of membership;
(e) the social rights of its members;
(f) the property rights of its members.

The above enumeration comprises legal rights which belong to the appellant, its division and branch associations and members. It has, and its division and branch associations and members have, a personal and individual interest in such rights and the appellant in its own right, and in the representative rights of its division and branch associations and members as a class, has a standing in this Court to present the constitutional questions involved in this litigation. It personifies the inherent rights of its members to express and exercise their social rights, and in making preference on the social side in the selection of its members, it is doing no evil and is not adversely affecting the economic status nor the economic rights of any regular or substitute male Railway Postal Clerk.

The appellant being a membership corporation speaks in its own right and the collective rights of its membership who are all in one and the same class and whose legal rights are adversely affected by the State statutes in question.

In Voeller v. Neilston Warehouse Co., 311 U. S. 531; 61 S. Ct. 376, this Court has said through Mr. Justice Black:

> "The constitutional issue is here raised for the majority shareholders by the corporation, which admittedly itself had notice. Exercising the very delicate responsibility of passing upon the validity of state statutes, this Court has many times declared the rule that only those who have been injured as the result of the denial of constitutional rights can invoke our jurisdiction on constitutional questions. Yet here the corporation would have us say that it is sufficiently the representative of the majority to raise in their behalf the constitutional issue, but not sufficiently their representative to receive notice. We hold that, so far as the constitutional requirement of due process is concerned, it is in this case sufficiently their representative for both purposes, and accordingly we find it necessary to reverse the judgment below.
>
> "There is nothing unusual in such a holding; the rights of parties are habitually protected in court by those who act in a representative capacity; an executor or administrator may act for the beneficiaries of an estate; a receiver may represent the collective interests of stockholders, partners, or creditors; a lawyer may appear for his clients; and a corporation may represent the collective interests of its shareholders. In this case, in fact, the unappealed ruling of the trial judge on the attempted intervention by the majority stands as an adjudication that in those respects here material the majority had committed their interests to the corporation itself."

See also:

Southern Railway Co. v. King, 227 U. S. 524.
Standard Stock Food Co. v. Wright, 225 U. S. 540.
Moffat Tunnell League v. United States, 289 U. S. 113.

There is a difference between social and economic rights. Social rights of the character involved in this case, emanating as they do from the natural rights of the individual,

carrying no evil, and conveying no legal injury to another in a state of society, are not subject to regulation under the police powers of the State. There will always be discriminations. We discriminate in the method of our religious worship. We discriminate in the choice of our friends. We differ in our tastes and likes, and yet nothing can be done about this for it is beyond regulation in the absence of a binding grant from us to our form of government.

To apply these Civil Rights sections to the appellant or to its division and branch associations or members would constitute an arbitrary and unreasonable regulation. It would be unreasonable to deprive the appellant or its members of the right to make selection in choosing members. Such choice does not constitute a discrimination which is unfair or unjust because it works no economic injury to any Railway Postal Clerk who is not a member of the appellant Association. The appellant has nothing to do in influencing the appointment or promotion in positions in the postal system where the rights appertaining thereto are fixed by the Civil Service Laws of the Federal Government. Any effort exerted by the appellant to advance the interests and welfare of the Railway Postal Clerks, if successful, redounds to the benefit of every Railway Postal Clerk in the same category whether he is a member of the appellant's Association or not. Consequently, the rights of no Railway Postal Clerk are adversely affected or limited and it is an unreasonable intervention of the State under the circumstances of this cause to apply the State law to the appellant or its officers and members, and is offensive to the due process clause of the Fourteenth Amendment. It amounts to a deprivation of the property rights of the appellant and places an unreasonable limitation upon the ownership and management of its property and its right to the liberty of contract.

The benefit fund which is created from contributions made by beneficiary members and accumulated for their benefit and protection is a property right belonging to the appellant which would be limited or destroyed by the enforcement of the Civil Rights Law here in question against it or its members.

In the *Nebbia* case arising out of a price-fixing statute of the State of New York the Act was challenged as being arbitrary and unreasonable under the due process clause of the Fourteenth Amendment. In the majority opinion a long line of previous cases in this Court was set forth where the legislation under review was sustained under the police powers against the challenge of the due process clause of the Fourteenth Amendment; and in the opinion read for the minority members of this Court a similar long line of previous cases in this Court was likewise set forth in which this Court had struck down state legislation as being arbitrary and unreasonable. In the majority opinion, page 536, Mr. Justice Roberts says:

> "It is clear that there is no closed class or category of businesses affected with a public interest and the function of Courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

And at page 539, he continues:

> "The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control like any other form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt and hence an unnecessary and unwarranted interference with individual liberty.

> "Tested by these considerations we find no basis in the due process clause of the Fourteenth Amendment for condemning the provisions of the Agricultural and Markets Law here drawn into question."

It is respectfully submitted that the business of the appellant as it is conducted inflicts no injury upon the public at large or upon any substantial group of the people or in any way affects adversely the economic status of any regular or substitute Railway Mail Clerk or of any member of the public. The case at bar is not a tax case, nor a price-fixing case, nor a labor relations case, nor a wage and hour case, nor is the business of the appellant subject to any license regulation. The appellant derives no benefit, economic or otherwise, under the labor relations provisions of New York State's Labor Law and to apply Sections 41, 43 and 45 of the Civil Rights Law to the appellant's organization or to its free choice in the selection of its members clearly constitutes an arbitrary and unreasonable regulation of its business and is an arbitrary and unreasonable interference with the property rights and the liberty of contract guaranteed by the due process clause of the Fourteenth Amendment to the appellant, its division and branch associations and members.

The question of discrimination when applied to the case at bar is a sociological matter which, in the absence of a constitutional grant from the people to the government, cannot be regulated under the State Police Powers. Such discrimination is not unjust. It is a preference causing no injustice to anyone.

It concerns a social relationship which must rest on voluntary action. The law cannot coerce its performance. We are all left free to choose. This is a personal and constitu-

tional right beyond the power of legislation. The choice is inherent in the person. Tolerance may broaden the choice and benevolence may soften to the point of common acceptance. Education and the spirit of Christianity may efface the thought of social differences. Coercive legislation is not the remedy.

In the Seventy-eighth Congress, Anti-Discrimination Bills were introduced both in the Senate and in the House of Representatives. They were designed to operate in the Federal field and in the government agencies where under the powers given to Congress such legislation might be enacted if constitutional. In the public hearings held before the House Committee on Labor, witness after witness from various fields of economics, labor relations, social workers, sociologists, and churchmen, indicating their approval of the contemplated legislation, made the distinction between social rights and economic rights, the latter being termed the right to live and to have the opportunity to work which would be accomplished by the enactment of the proposed legislation involving a procedure for the taking away from any employer in the field of industry in interstate commerce the right to refuse employment because of race, creed, color, national origin or ancestry, and would deny to the government agencies the privilege of making similar discrimination. (Report of Hearings before the Committee on Labor, House of Representatives, June 1-6, 1944.)

Section 43 of the Civil Rights Act came after considerable travail. It was the conception of the New York State Temporary Commission on the Condition of the Urban Colored Population in an effort to bar discrimination against the colored race in their right *to enjoy equal opportunity under the law.* The deprivation to the Negro of

his right to equal opportunity had developed into a serious economic problem. Unemployment and inadequate wage were the core of the matter. Employment and the right to work were the only alleviates. Consequently, to discriminate against the individual because of his color not only denied to him the right of equal opportunity but brought about economic results sizable enough to affect general welfare. This was the condition to cure which the Temporary Commission was seeking light and inspiration. (Italics ours.)

In its first report to the Legislature in 1938 (New York State Legislative Document No. 63, 1938) at page 24, the Commission stated:

> "Negroes frequently suffer in trade union employment through the job-filling policies established through the unions of which they are members. * * * A union of motion picture operators in New York City refused admission to Negro motion picture operators for many years, finally admitting them on an 'auxiliary basis' and restricting their employment, even today, to the Harlem area. Even in this area, it is charged that the jobs in the best paying theatres are reserved for whites.
>
> "It is with these considerations in mind that the Commission has recommended legislation designed in some measure to protect workers of minority groups from unfair discrimination by labor unions. The policy of our law, as developed both by the courts and the legislature of this State, regards a labor organization as a beneficent co-operative association of workmen *to unite their bargaining power for a contest with capital.* When, however, such an organization, having or seeking a closed shop, *i. e.*, a monopoly of employment in the particular craft or plant unit, deliberately practices racial discrimination it becomes an engine of oppression far more powerful than any combination of capital." (Italics ours.)

The top recommendation made by the Commission was a proposal for an amendment of the Labor Relations Act to

exclude from the protection thereof such unions as wished to bargain only for certain racial or religious groups of workers while denying other groups the privilege of membership or the opportunity for employment.

This recommendation was not enacted into law and in the second report of the Commission submitted in 1939 the proposed amendment in the identical language was again the top recommendation. At this session of the Legislature the bill accepting the recommendation of the committee was passed by both houses and vetoed by the Governor. The Governor's Memorandum in part follows:

> "The purpose of the bill cannot be too highly commended. * * * Well grounded fears have been expressed by many that this bill, if approved, would go far toward destroying the essential rights of organized labor."

While the bill was again introduced to the 1940 Session it died in Labor Committee but with a slight change in text it was presented as an amendment to the Civil Rights Law and thereupon promptly passed and signed by the Governor with an accompanying Memorandum in which he wrote:

> "This bill carries out one of the principal recommendations made in my Annual Message to the Legislature. The purpose of the bill cannot be too highly commended. Organized labor is recognized by all as a most significant part of our industrial society. This fact finds recognition in the enlightened laws recently written on the statute books of state and nation. But with greater rights come greater responsibilities. The rights which government has accorded to organized labor must not be used as instruments of oppression. They must be extended equally to all workers. Distinctions based on race, creed or color cannot be tolerated. Such practices can only result in bringing organized labor rapidly into justified ill repute. It must see itself as others see it, as an integral part of our democratic society. It will not long retain that

status by indulging in undemocratic habits of discrimination. This bill, I am certain, will aid greatly in eliminating the vicious practice of discrimination. This bill is approved."

In the recent cases of Steele v. Louisville & N. R. Co., 65 S. Ct. Rep. 226, and Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 65 S. Ct. Rep. 235, decided by this Court on December 18, 1944, stress was laid upon the fact that the economic rights of the negroes who were discriminated against by the unions involved, Mr. Chief Justice Stone in the course of his opinion saying "The minority would be left with no means of protecting their interests, or indeed their right to earn a livelihood by pursuing the occupation in which they were employed". The concurring opinion of Mr. Justice Murphy indicates that the legal question he was discussing rested upon economic discrimination which in the circumstances of the cases constituted unjust discrimination and in effect violated the constitutional rights of the individuals discriminated against.

POINT II.

Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York as applied to appellant, its division and branch associations and its members, constitute an invasion of and are in contravention to Article I, Section 8, Subdivision 7, of the Constitution of the United States.

Civil Rights Cases, 109 U. S. 18.
Re Debs, 158 U. S. 564.
Gilbert v. Minnesota, 254 U. S. 341.
Gillespie v. Oklahoma, 257 U. S. 505.
Hall v. DeCuir, 95 U. S. 485.

Illinois Central R. R. Co. v. Illinois, 163 U. S. 142.
Indian Motorcycle v. United States, 283 U. S. 575.
Re Jackson, 96 U. S. 727.
Johnson v. Maryland, 254 U. S. 51.
Prigg v. Pennsylvania, 16 Peters 539.
Re Rapier, 143 U. S. 110.
Postal Service Act, Dec. 21 1893, Code Title 39 U. S. C. A.
Code Title 5 U. S. C. A., chapter 12 session 652.

The postal system belongs to the Federal Government . . . Railway Postal Clerks are instrumentalities of the postal system more so perhaps than any other of its branches for the reason that they are handling and assorting the mail while it is being transported over the rail post routes of the country, requiring them to work at varying hours of the day so as to render continuous service in the dispatch of mail matter. They are in the classified service of the Federal Government and their appointments and promotions are controlled by Civil Service Laws which give them protection and security. They are not beholden to the procedure of collective bargaining. They are or should be the wards of Congress to which they must turn for the accommodation of their petitions and grievances.

The appellant's membership is made up of a part of those who serve the government in the Railway Mail Service. All in such Service are not members. Eligibility to membership primarily grows out of the fact that the applicant is engaged in the work of carrying on a governmental function in the Railway Mail Service. Membership, therefore, arises out of a class of government workers. It is true that the organization of the appellant is a private one but its activities spring from the fact that the members are government Railway Postal Clerks who are instrumentalities for the carrying on of the postal system. The

government has recognized their right to organize and has set limits on their organizational activities. This shows that the Federal Government displays concern as to these activities. The postoffice clause is stronger than the interstate commerce clause. The latter regulates interstate commerce and gives priority to the government to make the regulation but until the government acts to make the regulation the States within their borders may under their police powers pass local legislation if it does not directly affect or burden interstate commerce. The postoffice clause is of a different quality. It is a direct affirmative grant by the people to the central government to establish postoffices and post-roads. This grant is exclusive and all the power to carry it into effect resides in the Federal Government. In this field the States have no right to enter. The activities of the Railway Postal Clerks in organizing as such are related to their service in the postal system and so become the concern of the Federal Government under the postoffice clause.

In the Adair case, 208 U. S. 161, this Court back in 1928 held that the question of labor union membership of an employee of a railroad engaged in interstate commerce had no relation to interstate commerce and that an act of Congress making it a criminal offense for the representative of an employer to discharge the servant on account of his membership in a labor union was unconstitutional under the Fifth Amendment as offensive to the due process clause.

This Court more recently has said in dealing with cases arising under the National Labor Relations Act that membership in labor organizations could be made the concern of the National Government under the power given to regulate interstate commerce and that the Adair case and the

case of Coppage v. Kansas, 236 U. S. 1, have been completely sapped of their authority by the more recent cases.

Phelps Dodge Corp. v. National Labor Relations, Board, 313 U. S. 187.

The cause at bar deals with the situation in which the Railway Postal Clerk works for and carries out the function of the government in conducting the postal system. Here the contact is immediate and direct and the present status or weight of the determination in the Adair case or the Coppage case is of no material moment because the situation here is more direct with the government's right to regulate under the postoffice clause than in the Adair case under the interstate commerce clause. As was said by Mr. Chief Justice Hughes in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, speaking of the National Labor Relations Act at page 31, "It purports to reach only what may be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of Congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes (citing cases). It is the effect upon commerce, not the source of the injury which is the criterion."

We do not contend that the appellant is a governmental agency or instrumentality. Its membership is drawn from male Railway Postal Clerks who are in the classified civil service of the United States. Primarily, they are associated because their employment is in carrying on a function of the Federal Government. As Railway Postal Clerk they organize, and their common occupation identifies them and indicates their purpose to enable them to perfect any movement that may be for their benefit as a class or for the

benefit of the Railway Mail Service. Their conduct as it may affect them is related to their employment in this governmental service, and if such conduct is to be made the subject of regulations, such regulations must issue from the Federal Government. This is the spirit and the venture of Section 652 of the Classified Civil Service Code Title 5 which tells them in substance that they may group in associations but if they affiliate with an outside organization which imposes an obligation or duty upon them to engage in any strike, or proposes to assist them in any strike against the United States, it will be sufficient cause for their removal from the classified civil service. This regulates their conduct as government employees and is within the unquestioned and exclusive power of the Federal Government. This is a regulation the State has not the power to make any more than the State of Maryland had the right to require the mail carrier to take out a license for the vehicle he used on the highways of Maryland to deliver the mail as decided in the Johnson case (*supra*).

The Postal Service Act, December 21, 1893, Code Title 39 U. S. C. A., creates the postal system in all its various branches and it was the design of Congress thereby to appropriate the entire field of the postal service and its regulation, and the Auxiliary Act of August 24, 1912, c. 389, Section 6, 37 Stat. 555, being Section 652 of Code Title 5 U. S. C. A., manifests a clear intent on the part of Congress to show its concern regarding membership in any society, association, club or other form of organization of postal employees. Congress having established and organized the postal system in all its branches and in varying detail has exercised the federal power granted to the general government under the Postoffice and Post-Roads clause. The Act of Congress of August 24, 1912, aforesaid,

is a regulation affecting the conduct of postal employees in relation to their service, and a recognition of their right to organize for the improvement of working conditions and for other benefits. The State Act, Sections 41, 43 and 45 of the Civil Rights Law, so far as employees of the postal system are concerned, cannot be tacked onto the regulations made by Congress, for the State is excluded from legislating in this field. The prohibition of State action rests "not upon any consideration of degree but on the entire absence of power on the part of the States to touch the instrumentalities of the United States" (Opinion of Justice Brandeis in Gilbert v. Minnesota, 254 U. S. 341, citing the Johnson case *supra*).

The exclusive character of the power given to Congress to establish postoffices and post-roads as Mr. Justice Fields said in the Jackson case "has been practically construed since the foundation of the government to authorize not merely the designation of the routes over which the mail shall be carried and the offices where the letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents."

In the Debs case, Justice Brewer says:

> "What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control and management. While under the dual system which prevails with us the powers of government are distributed between the state and the nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts directly upon the citizen, and not through the intermediate agency of the state.
>
> "The government of the Union, then is, emphatically and truly, a government of the people. In form and in

substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

In the Civil Rights cases Justice Bradley after referring to the enumerated powers granted to the general government in the Federal Constitution says at page 18:

"In these cases Congress has power to pass laws for regulating subjects specified in every detail and the conduct and transactions of individuals in respect thereof."

In re Rapier, one of the lottery cases which involved a construction of an act of Congress in excluding from the mails lottery matter, the Court says:

"That power may be abused, furnishes no ground for denial of its existence if the government is to be maintained at all; it must be left to Congress in the exercise of a sound discretion to determine in what manner it will exercise a power which it possesses.

"When the power to establish postoffices and post-roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime or immorality within the States in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality."

In Hall v. DeCuir, Justice Clifford in the course of his opinion said:

"If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the State Legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. The Chusan, 2 Story, 466; Sinnot v. Davenport, 22 How. 227, 16 L. Ed. 243.

"In such a case, the legislation of Congress in what it does prescribe manifestly indicates that it does not

intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. Prigg v. Com. of Pa., 16 Pet. 539; Gibbons v. Ogden *(supra)*; Bk. v. Smith *(supra)*."

In New York Central R. R. Co. v. Winfield, 244 U. S. 147, where the New York State Workmen's Compensation Law as applied to interstate commerce was rejected, as in conflict with the Federal Employer's Liability Act, the above text is repeated.

The opinion in the Court of Appeals makes it plain that the Court was thinking of the appellant and its members as government servants engaged in a federal activity and was passing upon the relationship of the Railway Postal Clerk in his occupation as such to the government. It was not as to the citizen generally that the State Act, Section 43, was making the attempted regulation. It was, as applied in this cause, an effort to regulate the business and affairs of the appellant and its officers and members who constituted part of the class of male Railway Postal Clerks.

This was the obvious tenor of the reasoning of the opinion. It was the labor organization and the officers and members thereof which were being regulated. In any litigation under Section 43, proof of a violation must consist of evidence which would establish in the first place that the party prosecuted was a labor organization, or an officer or member thereof.

The opinion of the learned Court concludes as follows:

"The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has rec-

ognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all organizations within this State, including organizations of workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution." (R. 39.)

It is not a question of policy but a question of power of the State to enter the field of the postal system. The State Act invades this field. That this is so is made abundantly clear by the Congressional reports on the anti-discrimination bills.

In the House report the scope of the bill introduced in the House is set forth on page 5:

"Sec. 4. Scope of act.—The bill seeks to invoke the fullest exercise of the powers of the Federal Government to forbid discriminatory employment practices. Thus it is applicable to employers engaged in interstate or foreign commerce or in the production of goods for commerce, to employers whether or not engaged in such commerce who contract with the Federal Government, and to the subcontractors of such prime contractors. The concept of interstate commerce and operations affecting it has been the subject of so much recent judicial interpretation, particularly under the National Labor Relations Act that we believe there should be no difficulty in determining the boundaries of Federal jurisdiction.

* * * * * *

"Finally the bill regulates the employment relations of every Federal agency, except that the procedure for judicial review of the administrative cease-and-desist orders provided for is not applicable. Instead the section provides that any Federal officer who violates an order of the Commission created by the bill (as distinguished from a violation of the unfair employment practice section) shall be removed from office. The Commission will presumably report to the

appropriate appointing officer or agency any violation of its orders by a subordinate official."

On the question of the constitutionality of the bill the following appears at page 7 of this report:

> "The right to work is the most fundamental of constitutional rights. H. R. 3986 is an affirmation of that right and an assurance of its meaningfulness, through the exercise of the plenary powers of Congress to regulate interstate commerce and legislate for the executive agencies."

As to the bill's application to labor unions the report states at page 9:

> "To the extent that the bill would affect the conduct of a union, the bill is no more violative of the due-process clause than in its effect upon the conduct of private business. It is no less reasonable a restraint in one case than in the other. Like an employer, a labor union can be forbidden to abuse its right by intruding upon the countervailing right of employment."

The report cites the case of Carroll v. Local 269, (N. J.) 31 Atl. 2d 233 and quotes therefrom as follows:

> "* * * Although a monopoly of labor opportunity is a permissible objective and realization of a union, unions obtaining such monopolies must be democratic and admit to membership all those reasonably qualified for their trade. * * * Otherwise such persons by the act of the union would be deprived of their constitutional right to earn a livelihood."

As to the bill's application to Federal agencies the report states at page 9:

> "The prohibitions in H. R. 3986 apply also to the agencies of the Federal Government and to Federal contracts. Again, the authority of Congress is clear. In both respects the bill represents a self-imposed restraint upon the Government. It is a restraint imposed as a matter of policy under its unrestricted power of Congress to lay down administrative guideposts for executive agencies (Constitution art. 1)."

"The Senate report makes the design of the bill to prohibit discrimination in all employment which is now subject to the control of the Federal Government. But no States can adequately control employment practices of Federal agencies or railroads or any other fields of employment that are constitutionally subject to exclusive Federal regulation. The responsibility of the Congress in this matter is inevitable."

The report says at page 7 that the proposed legislation affects:

> "(a) Government employment.—The congressional power, under article I, section 8, of the Federal Constitution, to regulate the employment practices of all Federal agencies is too clear to merit argument. It is the basis of all our civil-service laws and no challenge to this power has ever been successful in the courts. See United States v. Mitchell (89 F. 2, 805-809 (App. D. C.))."

Both the law-making bodies and the Courts have shown reluctance to regulate the activities of labor organizations or to place hindrances around the rights of the worker to organize for mutual aid and protection as against the coercion, interference or restraint of the employer. They have recognized these as inherent and natural rights and have immunized them as countervailing factors more equally to equip the worker with an approach to equality in the labor relations which grow out of private industry. They are rooted in the philosophy of collective bargaining and get their strength from modern jurisprudence which confirms these rights as justly entitled to the law's protection.

The situation which surrounds the worker in government service differs fundamentally. In this labor relation there is neither the philosophy nor the pronouncement of a recognized underlying conflict. The right to enter government service is open to all who possess the qualification or com-

petency to attain the classified service. Their rights are protected by law and they are secure in their appointments and promotions.

Among the exhibits on behalf of appellees are excerpts from statements made by officers or members of the appellant Association and officers and members of other postal organizations connected with the postal system of the United States before Committees of the Congress in relation to sundry bills pending in Congress dealing with the postal system generally and creating regulations and providing benefits and improvements in the various branches of the Post Office Department. These activities should persuade that the workers in the postal service turn to the Congress as the source of power to confer benefits under the postal system and to make regulations affecting the conduct of those serving therein.

A discussion of the dual character of our governmental structure and the separation of powers may be found in the case of Carter v. Carter Coal Co., 298 U. S. 294, and in Howard v. Illinois Central R. R. Co., 207 U. S. 463.

And as to the need of uniformity in the application of legislation having national scope or dealing with the instrumentalities of the Federal Government see United States v. Darby Corp., 312 U. S. 100; also Lyeth v. Hoey, 305 U. S. 194.

The uniformity factor is the essence of national legislation because it covers the whole area of the national domain. If New York may pass legislation regulating the conduct of Railway Postal Clerks within the State, any other State would be as free to make other or inconsistent regulations and the conduct of the Railway Postal Clerk in one State could be legal whereas in another State it might be illegal. Such situation must be left to a law national in scope and uniform in effect.

POINT III.

The procedure in this case for declaratory judgment with prayer for injunctive relief presents a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Article III, Sections 1 and 2).

Aetna Life Ins. Co. v. Haworth, 300 U. S. 227.
Chamberlain Inc. v. Andrews, 271 N. Y. 1; affd. 299 U. S. 515; 301 U. S. 714.
Coffman v. Breeze Corp., 65 Sup. Ct. Rep. 298 (January 2, 1945).
Hoopeston Canning Co. v. Cullen, 318 U. S. 313.
Nashville, etc. Ry. Co. v. Wallace, 288 U. S. 249.
New Jersey v. Sargent, 269 U. S. 328.
New York Operators v. State Liquor Authority, 285 N. Y. 272.
Steele v. Louisville & Nashville R. R. Co., 65 Sup. Ct. Rep. 229.

The procedure in this case for declaratory judgment with prayer for injunctive relief was authorized under Section 473 of the Civil Practice Act of the State of New York, and the Rules of Civil Practice, Sections 210-214, and is a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Const. Article III, Sections 1 and 2).

The cause now presented involves a typical and concrete "case" or "controversy". It is not moot nor collusive. It has arisen from a controversy as to the legal meaning, effect, application and constitutionality of the State herein in question.

The seeds of this litigation were planted when members of the local branch of appellant's organization in New

York City, having elected to membership in the Railway Mail Association contrary to its Constitution and By-Laws, sought the aid and intervention of the then Industrial Commissioner of the State of New York who, in turn, sought the advice of the then Attorney-General. The latter furnished to the Industrial Commissioner a legal opinion caustically critical of the Caucasian clause of the appellant's Constitution and of the policy followed by the appellant thereunder, holding that such clause was illegal and of no effect within the State of New York and that members of the local branch were legally right in ignoring it. Thereupon the Industrial Commissioner requested the appellant to advise her, for the completion of her official records on the matter, of the future policy of appellant's branch associations within the State of New York with reference to compliance with the Civil Rights and Labor Laws. To this request the appellant notified the Commissioner that the Civil Rights Law and the Labor Law do not apply to the appellant or its branch associations and if sought to be applied would constitute and be a violation of the Constitution of the United States and the Constitution of the State of New York and further notified the said Commissioner of its intention to bring action for a declaratory judgment of its rights and legal relations in the premises (R. 6-9).

This action was then brought. The issue involved was joined upon verified pleadings. The issue was tried on the evidence submitted in accordance with the stipulation. The underlying facts were not in dispute, the controversy arising upon the legality and application of the State laws in question. The issue proceeded to judgment and final determination. At the Trial Court injunctive relief as prayed was granted which upon appeal was reversed and the Complaint dismissed with costs.

The case is an actual case or controversy, where the issu is actual and adversary. It was not made the medium fo securing an advisory opinion in a controversy which had not arisen. The controversy was actual and earnest before the action was brought.

The appellant was asserting and insisting upon the lega right to conduct its business and affairs as it had done before the Civil Rights Amendments; that such laws did not apply to it and were the State of New York to enforce them against the appellant it would constitute a violation of the Federal Constitution. The Commissioner was asserting and insisting upon the claimed legal right to enforce the statutes in question, and this clash and conflict created a real controversy resulting in this case.

In the case of State of New Jersey v. Sargent, this Court, quoting from an earlier opinion, at page 333 says:

> "But no Court sits to determine questions of law *in thesi*. There must be a litigation upon actual transactions between real parties, growing out of a controversy affecting legal or equitable rights as to person or property. All questions of law arising in such cases are judicially determinable."

And again at page 334:

> "It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or are about to be, affected prejudicially by the application or enforcement of a statute that its validity may be called in question by a suitor and determined by an exertion of the judicial power."

In Conclusion, It is Respectfully Submitted that the Judgment Appealed from Should be Reversed, With Costs.

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